IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Bail Appl..No. 6474 of 2007()

CRMP.3389/2007 of II ADDL. DISTRICT COURT, PALAKKAD
CRIME NO.213/06 OF CHERPULASSERY POLICE STATION)
.....

PETITIONER/2ND ACCUSED

VINODKUMAR, S/O. KUTTIKRISHNAN,
PUTHENVEETTIL HOUSE, CHUNDANPETTA, KULUKKALLUR,
OTTAPPALAM TALUK.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.6474 of 2007

Dated this the 30th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. The petitioner was not originally shown as an accused in the F.I.R. Subsequently he has been arrayed as an accused. Illegal sale of toddy was taking place in a house. Toddy was being delivered in that house in a jeep. Local people raised objections against such illicit sale of toddy in the locality. Police on information reached the scene. The jeep was left there and the driver of the jeep ran away. The consignment of toddy which was brought in the jeep was taken to the house of the 1st accused. The 1st accused was not available at the house. He has subsequently been arrested and released on bail. The petitioner is allegedly the person who brought the illicit toddy to the scene of the crime in a jeep and allegedly ran away from the scene of crime.

2. According to the petitioner, he is absolutely innocent. He has nothing to do with the crime. He has been proceeded against unnecessarily. He may be granted anticipatory bail, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the complaint of local people about illicit sale of liquor in an unlicensed premises had attracted police action. The materials presently available indicate that it was the petitioner who ran away from the jeep and had allegedly

brought the contraband article to the scene of the crime. In these circumstances, the petitioner has to be arrested and interrogated. There exists nothing to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This petition may, in these circumstances, be dismissed, submits the learned Public Prosecutor .

4. Having considered all the relevant inputs, I am persuaded to agree that there is merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail. I find absolutely no features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-